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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi-2, the 11th October, 1957/19th Asvina 1879

S.R.O. 3383.—Whereas the election of H.H. Raghunath Singh, as a member of the Lok Sabha from the Barmer Parliamentary constituency of that Sabha has been called in question by an Election Petition duly presented under Pt. VI of the Representation of the People Act, 1951 (43 of 1951), by Shri Gobardhan Das Binani, son of Shri Mathuradas Binani, resident of 38, Strand Road, Calcutta;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said petition, has sent a copy of its order to the Commission;

Now, therefore, the Election Commission hereby publishes the said order of the Tribunal.

IN THE COURT OF THE MEMBER, ELECTION TRIBUNAL AT BALOTRA

PRESIDED BY SHRI SOHAN LAL AGARWAL, B.A., LL.B.

ELECTION PETITION No. 434 OF 1957

Shri Gobardhandas Binani, residing at 38, Strand Road, Calcutta—*Petitioner.*

Versus

H.H. Shri Raghunath Singh S/o Maharawal Girdhar Singhji, residing at Palace Jaisalmer (Rajasthan)—*Respondent*

ELECTION PETITION UNDER S. 80 OF THE REPRESENTATION OF PEOPLES ACT, 1951.

ORDER

30th August, 1957

The respondent has taken a preliminary objection that this election petition should be dismissed under section 90(3) of the Representation of People Act, 1951 because the petitioner has failed to comply with the mandatory provisions of S.82 of the said Act. Before I proceed to answer this question, it is necessary to state a few facts which are uncontroverted.

2. In February-March 1957 election to the House of People from Barmer Single Member Parliamentary Constituency in the State of Rajasthan was held. The petitioner, Shri Gobardhan Das Binani, the respondent H.H. Shri Raghu Nath-Singh and two others Sarwa Shri Roop Narain and Hukam Singh filed their nomination papers but subsequently Shri Roop Narain withdrew his candidature on 4-2-1957 and Shri Hukam Singh retired from the contest on 14-2-1957. Thus the petitioner, Shri Binani, and the respondent, Shri Raghunath Singh were left in the field to contest the elections. The polling in the said Constituency commenced on 25-2-1957 and ended on 9th March, 1957. The result was declared on 21st March, 1957. The petitioner and the respondent secured 51,701 and 79,318 votes respectively and the respondent was declared to have been elected to the House of People from the said Constituency. On 3rd May, 1957 the petitioner filed this election petition before the Secretary, Election Commission, India and impleaded the returned candidate H.H. Shri Raghunath Singh as respondent.

The petitioner challenged the election on various grounds which are not necessary to reiterate here for the determination of this preliminary points and prayed "that the election of the respondent be declared to be void, and the petitioner be declared to have been duly elected to the House of People, and such other or further relief be granted including costs as might appear fit and proper."

3. Under Section 86 of the Representation of People Act, 1951, this Tribunal was constituted and the petition was referred for trial after fixing 6th July, 1957 as the date for the first appearance of the parties. The Election Commission without deciding the point further made and order to the effect:—

> "The petitioner has not joined as respondent to the petition one of the contesting candidates, namely, Shri Hukam Singh, who retired from the contest under Section 55A of the Representation of the People Act, 1951. This may affect the maintainability of his prayer for having himself declared as duly elected."

The respondent filed his written statement on 6-7-1957 and one of the objections taken by him in para 14 of his written statement is that "Shri Roop Narain and Shri Hukam Singh are necessary or at any rate proper parties and in their absence, the petition is not maintainable." It may be stated here that since the arguments before me were confined to the non-joinder of Shri Hukam Singh only it is unnecessary for me to consider the effect of non-joinder of the other candidate Shri Roop Narain.

4. Before I come close quarters to the point in issue, it may be stated that Part VI of the Representation of People Act, 1951 hereinafter referred as Act deals with "disputes regarding elections". Section 84 of the Act reads as follows:—

> *"Relief that may be claimed by the petitioner.*—A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected."

Section 82 is in the following terms:—

> *"Parties to the petition.*—A petitioner shall join as respondents to his petition—
>
> (a) Where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and
>
> (b) any other candidate against whom allegations of any corrupt practice are made in the petition."

Section 90(3) provides as follows:—

> "The Tribunal shall dismiss an election petition which does not comply with the provisions of section 81, section 82 or section 117 notwithstanding that it has not been dismissed by the Election Commission under section 85."

5. The learned counsel for the respondent contends that the petitioner has not impleaded Shri Hukam Singh who is a contesting candidate in terms of section 82 of the Act as a respondent to his petition and, therefore, his non-compliance must entail dismissal of the petition. The argument is that in a case like this where the petitioner in addition to claiming a declaration that the election of the returned candidate is void claims a further declaration that he himself has been duly elected he is under a statutory obligation under section 82 to join all the contesting candidates as respondents to his petition and that in the event of his non-compliance with this mandatory provision of law, the Tribunal has no other alternative but to dismiss the petition under sub-section (3) of section 90 of the Act notwithstanding the fact that it was not dismissed by the Election Commission.

6. The learned counsel for the petitioner on the other hand contends that Shri Hukam Singh after his retirement from the contest is not a contesting candidate within the terms of section 82 and that even if he is treated as such his non-joinder is not fatal and can either be cured or ignored having regard to the scheme and the aim of the Act. He also contends that the non-joinder of Shri Hukam Singh may at the most affect the petitioner's prayer for having himself declared as duly elected and his prayer for the other relief in respect of the declaration that the election of the respondent is void remains unaffected.

7. The foremost point for consideration is: Whether Shri Hukam Singh after his retirement under section 55A is a contesting candidate in terms of section 82 of the Act? The answer to this question depends on the interpretation that may be put on the words "all the contesting candidates" occurring in section 82.

8. Learned counsel for the petitioner contends that the expression "all the contesting candidates" used in section 82 excludes from its meaning those candidates who have retired from the contest under section 55A. He argues when a candidate has retired from the contest under section 55A unless there is anything contrary to show such retirement clearly indicates that he ceases to be a contesting candidate thereafter. He refers to various provisions of the Act, *viz.*, sections 52, 53, 54 and 78 of the Act and Rules 17 and 52 of the Representation of People (Conduct of Elections and Election Petitions) Rules 1956 hereinafter referred as Rules and contends that though the expression "contesting candidate" appears in these provisions a candidate after his retirement from the contest is not considered a contesting candidate therein. The argument is that the words "all the contesting candidates" occurring in section 82 should also be interpreted to mean those candidates who have not retired from the contest and who have literally contested the elections. In building this argument, he sought help of the rules for the interpretation of the statutes. For reasons which I will presently show these arguments do not appear to me tenable.

9. It is a fundamental rule of interpretation of statutes that where the words are clear and unambiguous it is the duty of the court to give effect to them according to their plain meaning and it is not right to track out rules for giving special meaning to the words. It is also immaterial in such a case what the consequences may be. The expression "contesting candidate" appears for the first time in section 38, the relevant part of which reads as follows:—

> "*Publication of list of contesting candidates.*—(1) Immediately after the expiry of the period within which candidatures may be withdrawn under sub-section (1) of section 37, the returning officer shall prepare and publish in such form and manner as may be prescribed a list of contesting candidates, that is to say, candidates who were included in the list of validly nominated candidates and who have not withdrawn their candidature within the said period."

From this section, it is clear that once a candidate is validly nominated under section 36(8) of the Act and he does not withdraw his candidature under section 37 and his name is published in the list of contesting candidates under section 38(1) then he becomes a contesting candidate. The words "contesting candidates" occurring in section 82 are clear unambiguous and admit of no doubt. Having regard to the provisions of section 38, there appears to me no legal obstacle why the ordinary and plain meaning of the words "all the contesting candidates" occurring in section 82 should not be understood in the sense that they are those candidates who were validly nominated and had not withdrawn their candidatures and whose names were published in the list of contesting candidates. It is, therefore, unnecessary to search out rules and narrow down the plain meaning of these words and say that they refer to those candidates only who have not retired and literally contest the elections. Such a course, I am afraid, is neither allowable by the rules nor called for in this case in view of the provisions of section 38 where these words have already been explained in an unambiguous language.

10. The phrase "contesting candidate" used in sections 52, 53, 54 and 78 of the Act and Rules 17 and 52 referred to by the learned counsel for the petitioner doubtless excludes from its meaning a candidate who has retired from the contest. A careful scrutiny of these provisions would, however, reveal that the legislature intended to give a particular meaning to the words "contesting candidate" used in these sections and rules in the context of the provisions contained therein and, therefore, a candidate who has retired from the contest is expressly excluded therefrom. Section 52 contains provisions for countermanding the poll in the event of the death of a contesting candidate. By sub-section (5) of section 55A of the Act a candidate who has given a notice of retirement is expressly excluded from the category of the contesting candidate for the purposes of section 52 in order to make it clear that the death of a candidate who has retired from the contest will not countermand the poll. The reason for this is obvious. A candidate who has given a notice of retirement ceases to have any importance in the poll and, therefore, even if he dies before the date fixed for the poll that should not obviously lay foundation for countermanding the poll. The term "contesting candidate" appearing in sections 53 and 54 also excludes from its meaning a candidate who has retired from the contest. The reason is that these sections

relate to that stage in the elections which arrives soon after a contesting candidate, if any, has retired from the contest leaving the remaining candidates in the field to contest the elections. This position is also clarified in sub-sections (6) and (7) of section 55A by inserting the words "remaining contesting candidates" therein. In section 78 the phrase used is "contesting candidate at an election" and not "contesting candidate". Apparently both these expressions are not synonymous. It cannot also be said with any amount of certainty that the term "contesting candidate at an election" necessarily excluded from its meaning a candidate who has retired from the contest. In any case, the expression appearing in section 78 contains qualifying words and, therefore, the intention appears to have been to convey a particular sense to this expression in the context of the provisions wherein it occurs. In Rules 17(b) and 52(b) the definition is that of a "candidate" and not of a "contesting candidate". They lay down that a "candidate" for the purposes of Chapters II and III is that contesting candidate who has not retired in accordance with the provisions of section 55A. The definition is obviously meant for Chapters II and III only and cannot govern the other provisions of the Act. Looking to the contents of these Chapters, it seems Legislature intended to give a particular sense to the word "candidate" occurring in these Chapters. Thus it will appear that except sections 38 and 82 of the Act where it is intended that a contesting candidate after retirement is not to be considered a contesting candidate thereafter the matter is either expressly stated so [*see* sub-sections (5), (6) and (7) of section 55A and Rules 17 and 52] or the term is used with some qualification (*see* section 78). Such is not the case with regard to the expression in controversy, and, therefore, having regard to section 38, I see no reason why its meaning should be strained and narrowed down gratuitously in the manner canvassed by Shri Joshi simply because it is given a particular meaning in the aforesaid sections and rules. One of the rules of interpretation of statute is that when the same words or phrases are used in different parts of the same statute they would ordinarily receive the same meaning unless the context or the object requires otherwise. In the present case. I see no reason why the expression in controversy should be understood in the sense different from that which is explained in section 38 of the Act.

11. S. 55A of the Act nowhere gives an indication that a contesting candidate after his retirement from the contest ceases to be a contesting candidate thereafter. This section provides for a "contesting candidate to retire from the contest." This obviously means that he withdraws himself from the contest and not that he also retires from his status of a contesting candidate given to him by S.38(1). In any case mere retirement from the contest does not follow as a necessary corollary that he is also wiped out from the list of contesting candidates or ceases to be termed a contesting candidate thereafter. The words "remaining contesting candidates" occurring in sub-section (6) and (7) of the sections also do not show that a contesting candidate after retirement ceases to be so thereafter. The position therefore is this: that once the name of a candidate is published in the list of contesting candidates under S. 38(1) then unless something is shown to the contrary he remains a contesting candidate thereafter regardless of his retirement under S. 55A. It is significant to note that in sub-section (5) of S. 55A it is provided that any person who has given a notice of retirement shall thereafter be deemed not to be a contesting candidate for the purposes of S. 52. This shows that the intention appears to have been to limit the provision in respect of S. 52 only and not in respect of S. 82. If the Legislature intended that a contesting candidate after retirement was nothing better than any other elector and in any case ceased to be a contesting candidate for the purposes of section 82 also it would have been plainly provided so in section 55A.

12. Then it is further significant to note that S. 79 defines certain words used in part VI in which S. 82 appears. The words "returned candidate" occurring in S. 82 are defined in sub-section (f) of S. 79 but no definition is given of the words "contesting candidates" used in this very section. It seems when the Legislature used the expression "all the contesting candidates" in S. 82 the intention appears to have been that they were to be understood in the sense already explained in S. 38. The words "returned candidate" occurring in S. 82 are defined in sub-section (f) of S. 79 as "a candidate whose name has been published under S. 67 as duly elected" and therefore keeping in view the provisions of S. 38 there appears to me no legal obstacle why a contesting candidate for the purposes of this section be not deemed to be a candidate whose name was published in the list of contesting candidates.

13. This result is further achieved in another way. Under the old S. 82 a petitioner was required to join as respondents to his petition all duly nominated candidates at the election. Conflicting views were taken as to the meaning of the words "duly nominated candidate" but it is not necessary for me to go into

this controversy for the purposes of this case. In MADAN MOHAN (PETITIONER) V. BANKAT LAL AND OTHERS (OPPOSITE PARTIES), 3 I. L. R. (RAJASTHAN) 891 and MENGHRAJ V. BHINANDAS AND OTHERS, E. L. R. 301 it was held that in a case where the petitioner wants a declaration that he has been duly elected all those candidates who were duly nominated regardless of the withdrawal and rejection were necessary parties. This shows that all those candidates who were duly nominated regardless of their withdrawal and rejection were considered necessary parties where the petitioner prayed for a relief of a declaration that he has been duly elected. By S. 45 of the Amending Act 27 of 1956 the old section 82 was removed and in the new section 82 it was made obligatory on a petitioner to implead all the contesting candidates as respondents when he laid claim to the seat either for himself or for any other candidate. It is fair to presume that Parliament had knowledge of these decisions at the time of this amendment and therefore when the expression "all the contesting candidates" was inserted in the new section the intention could not have been to exclude therefrom all such candidates who were validly nominated and who had already been considered as necessary parties to such a relief.

14. In view of what is said above my definite finding is that the expression "all the contesting candidates" occuring in S. 82 means all those candidates who regardless of their retirement have been validly nominated and have not withdrawn their candidatures and whose names have been published in the list of contesting candidates. That being so Shri Hukamsingh whose name was admittedly published in the list of contesting candidates under S. 38 should regardless of his retirement be considered a contesting candidate for the purposes of S. 82.

15. The next question for consideration is what is the effect of non-joinder of Shri Hukam Singh? Shri Joshi, learned counsel for the petitioner, contends that though the word "shall" is used in S. 82 the provision regarding array of parties mentioned therein is merely directory and therefore non-joinder of any party mentioned therein is not fatal unless the party omitted is a necessary party. He further argues that even if Shri Hukamsingh is considered a contesting candidate within the terms of S. 82 he is not a necessary party after his retirement from the contest and therefore even if his name is omitted from the list of respondents the Tribunal can deal with the matter under the provisions of the Code of Civil Procedure. He also argues that one of the essentials of the Election Law is that the election should be fair and free and not vitiated by corrupt and illegal practices and since the citizens at large have got substantial interest in the elections the matter is not confined to the persons who had fought them and therefore it is also the duty of the Tribunal to institute a thorough enquiry into the matter and avoid dismissing the proceedings on such technical defects. In support of these contentions he places reliance of JAGAN NATH V. JASWANT SINGH AND OTHERS, 9 E. L. R. 231 and BHIKAJI KESHAO JOSHI AND ANOTHER V. BRIJLAL NANDLAL BIYANI AND OTHERS, 10 E. L. R. 357. I have carefully read both these authorities but if I may say so with profound respects they are based on the sections as they stood prior to the Amending Act 27 of 1956. Under the old sections 85 and 90(4) non-compliance with the provisions of S. 82 was not made penal and therefore in 9 E. L. R. 231 which was later followed in 10 E. L. R. 357 it was held that the provision contained in S. 82 was only directory and therefore non-compliance with it was not fatal to the petition and the Tribunal should deal with the matter according to the provisions of the Code of Civil Procedure and that an election petition should not be dismissed in limine for failure to implead such candidate. It was also held that a candidate who has withdrawn his candidature is a proper party and not a necessary party. As already stated this view was taken in these cases because no penalty was provided in old sections 85 and 90(4) for non-compliance with S. 82. The old section 90(4) further gave a discretion to the Tribunal in the matter of dismissing a petition in cases where it failed even to comply with certain mandatory provisions of law mentioned therein. In 9 E.L.R. 231 their Lordships observed at page 236, 239 and 240:—

> "It is significant to note both the Election Commission and the Tribunal have been given powers in express terms to dismiss an election petition which does not comply with the requirements of sections 81, 83, or 117 but no such powers are given to dismiss a petition in limine which does not comply with the provisions of section 82. Such a petition can only be dismissed at the conclusion of the trial and on grounds sufficient to dismiss it (section 98).
>
> "The provisions of section 82 are in terms similary to the provisions of Order XXXIV, rule 1, of the Code of Civil Procedure. Therein it is provided that all persons having an interest either in the mortgage security or in the right of redemption shall be joined as parties to any suit relating to the mortgage. There is ample authority for the view that this is merely a directory provision and non-joinder

of any party is not a fatal defect and a decree can be passed so far as the parties actually on record are concerned unless the party omitted is a necessary party in the sense that in his absence no relief could be given at all even as regards parties actually on record. There is no valid reason for treating the word "shall" in section 82 in a manner different from the same word used in Order XXXIV, rule 1, of the Civil Procedure Code. It is one of the rules of construction that a provision like this is not mandatory unless non-compliance with it is made penal."

"From the circumstance that section 82 does not find a place in the provisions of section 85 the conclusion follows that the directions contained in section 82 were not considered to be of such a character as to involve the dismissal of a petition in limine and that the matter was such as could be dealt with by the Tribunal under the provisions of the Code of Civil Procedure specifically made applicable to the trial of election petitions."

16. After the amendment of the old sections 82, 85 and 90 by the Amending Act 27 of 1956 the position has become different. S. 82 (new) requires the petitioner to join as respondents,

(i) the returned candidate or candidates where he prays for a declaration that their election is void;

(ii) all the contesting candidates where he claims the seat either for himself or for any other candidate in addition to claiming a declaration mentioned in (1) supra; and

(iii) any other candidate against whom the petitioner makes allegations of any corrupt practice in the petition.

S. 85 (new) now requires the Election Commission to dismiss a petition which does not comply with the provisions of S. 82 after giving an opportunity to the petitioner of being heard. S. 90(3) (new) also requires the Election Tribunal to dismiss an election petition which does not comply with the provisions of section 82 notwithstanding that it has not been dismissed by the Election Commission under S. 85. It will appear from these new sections that in a case like this where the petitioner claims the seat either for himself or for any other candidate in addition to the relief for declaring the election of the returned candidate void he must under S. 82 implead all the contesting candidates and in the event of his non-compliance thereof the Election Commission shall dismiss the petition and notwithstanding that it has not been dismissed by the Election Commission the Tribunal shall dismiss the same. In other words compliance in respect of array of parties as required by S. 82 is now mandatory because S. 85 and 90(3) provide that the petition shall be dismissed if the provisions of S. 82 are not complied with. Joinder of parties in the manner required by S. 82 is now a statutory obligation on a petitioner. If it is found a petitioner has not impleaded a statutory party prescribed by S. 82 then the question whether the party omitted is a necessary or proper party does not now arise at all. With the inclusion of S 82 in the amended sections 85 and 90(3) both the Election Commission and the Tribunal are now armed with the powers of dismissing a petition in limine which does not comply with the requirements of S. 82. It can safely be said, without departing from the principles enunciated by the Supreme Court in the above cited rulings, that non-compliance with the provisions of S. 82 must now result in the dismissal of the petition in limine and it is no longer open to a Tribunal now to consider whether the party omitted is a necessary or proper party. In the face of the preemptory and unyielding provisions of S. 85 and 90(3) it can also be said that a Tribunal is neither entitled to deal with the matter and remove the defects of non-joinder of a party either under the provisions of the Code of Civil Procedure or under its inherent jurisdiction nor permitted to proceed with the trial of such defective petition on the consideration of purging the elections of all kinds of corrupt practices. In 9 E. L. R. 231 their Lordships observed at page 234:—

"The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the court possesses no common law power. It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interferred with and any petition seeking such interference must strictly conform to the requirements of the law.....In cases where the election law does not prescribe the consequence or does not lay down penalty for non-compliance with certain procedural requirements of that law, the jurisdiction of the Tribunal entrusted with the trial of the case is not affected."

The election law in Ss. 85 and 90(3) now prescribes consequence for non-compliance with the provisions of S. 82. The Tribunal must therefore strictly observe these statutory requirements and there appears to me no force in the arguments of the learned counsel for the petitioner that the non-compliance is a mere technical defect which the Tribunal should ignore in the context of its obligation to purge the elections from corrupt practices.

16. The last point for consideration is whether the petitioner's failure to comply with the provisions of S. 82 should result in the dismissal of the election petition as a whole or it should only affect his prayer for claiming a seat to himself. Learned counsel for the petitioner contends that S.84 gives a discretion to the petitioner in the matter of claiming reliefs and as no penalty is provided either in S.85 or in S.90(3) for non-compliance with the provisions of S.84 the petitioner can amend the reliefs prayed in his petition. He further contends that under S.82 the petitioner is required to join as respondent a returned candidate if the relief sought is confined to one declaration only that his election is void and argues that this petition answers the requirements of S.82 in respect of array of parties as far as the relief of declaring the election of returned candidate is concerned and therefore there is no legal obstacle to proceed with the trial of the petition for the grant of this limited relief. He refers to S.3 Indian Limitation Act, 1908 and argues that just as a suit which comprises several reliefs is not dismissed as a whole on the ground of limitation if it is found that one of the reliefs comprised therein is barred by time the election petition in this case therefore should not be dismissed as a whole but only that relief which does not answer the requirements of law should either be struck off or allowed to be withdrawn. He relied on SITARAM HIRACHAND BIRLA V. YOGRAJ SINGH SHANKAR SINGH PARIHAR, 2 E.L.R. 283, JWALA PRASAD MISRA V. MAHADEO AND OTHERS, 6 E.L.R. 1, A. SRINIVASAN V. G. VASANTHA PAI AND OTHERS, 10 E.L.R. 245, A. K. SUBBARAYA GOUNDER V. K. G. PALANISAMI GOUNDER AND OTHERS, 11 E.L.R. 251 and the observations made by the learned author Shri G. S. L. Srivastava at page 237-238 of his book, "Indian Elections and Election Petitions" (Second Edition) and by the learned authors Nanakchand Pandit and Gyanchand Mathur at page 168 of their book "The law of Election and Election Petitions in India" (Second Edition).

17. I have carefully read the rullings relied on by the learned counsel for the petitioner. They are however distinguishable. The point which arises in the instant case whether a petition which does not comply with the mandatory requirements of law in the matter of joinder of parties when a particular relief is claimed therein should be allowed to proceed or not was not in issue in those cases. They were decided under the old provisions of the Representation of People Act, 1951. Formerly under S.84 the petitioner could claim any three reliefs mentioned therein and R.119 prescribed different periods of limitation for each relief. Under the old S.82 the petitioner was required to join as respondents to his petition all the candidates who were duly nominated at the election regardless of the nature of relief claimed in the petition. There was neither a statutory obligation nor even a statutory discretion in the Tribunal to dismiss a petition on the ground of non-joinder of parties. Under the old section 90(4) it was further discretionary with the Tribunal to dismiss the petition even in cases where it failed to comply with the mandatory provisions of the law mentioned therein. In this view of the law as it stood it was held in these cases that the petitioner could claim the reliefs cumulatively and even if it is found that the petitioner was not entitled to a particular relief on the ground of limitation or otherwise the Tribunal instead of dismissing the whole petition could give the appropriate relief to which the petitioner was otherwise entitled. It was also held that it was for the Tribunal to consider what is the effect of non-joinder and if relief could be granted to the petitioner in the absence of a party it should do so instead of dismissing the petition as a whole.

18. Now the position of law in the matter of claiming reliefs, joining respondents and the effect of non-compliance thereof is different from what it was before the Amending Act 27 of 1956. S.84 now provides only two reliefs that may be claimed in an election petition *viz.* a declaration that the election of all or any of the returned candidate is void or in addition to this declaration a further declaration that he himself or any other candidate has been duly elected. S.81 now prescribes only one period of limitation for an election petition. S 82 now imposes an obligation on a petitioner to join certain persons mentioned therein as respondents according to the nature of the relief claimed in the petition. S.82 now finds place in both Ss.85 and 90(3) which provide that a petition which does not comply with the provisions of Ss.81, 82 and 117 shall

be dismissed. S.90(3) further lays down that a Tribunal shall dismiss an election petition which does not comply with the provisions of the said sections notwithstanding the fact that it has not been dismissed by the Election Commission under S.85. It will thus appear that the requirements in respect of joinder of parties are now contained in S.82 and consequence for a non-compliance thereof has also been provided in Ss.85 and 90(3). When S.82 is read with sections 85 and 90(3) it is clear that the intention of Legislature now is to lay great importance on the matter of impleading respondents to an election petition prescribed by S.82. Joinder of a statutory party to an election petition under S.82 is now no longer a matter of form but of substance and goes to the very root of the petition. When it is discovered that a petitioner has failed to implead a statutory party required to be impleaded under S.82 then a Tribunal under S.90(3) can neither over-look this defect nor adopt a course other than the summary dismissal of the petition. The question whether in the absence of the statutory party any relief could be given as regards the parties already on record does not now arise at all. The provisions of Ss.82, 85 and 90(3) are preemptory and admit of no other construction. The language used therein is plain and precise and leaves no room for any discretion but to dismiss the petition summarily as soon as the defect of non-compliance in the array of respondents is noticed. These provisions are now unyielding and an express obligation is cast both on a petitioner and the Election Commission and a Tribunal to observe and enforce them faithfully and strictly. They are self-contained and do not now appear to compromise with the relevant provisions of the Code of Civil Procedure in this regard. The use of the words "shall dismiss' in S.90(3) now expressly take away the discretionary powers as well as the inherent jurisdiction of a Tribunal in this matter. The defect of non-compliance can no longer be cured under the provisions of the Code of Civil Procedure, O.1, R.9, 10 and 13 or ignored on such grounds as are canvassed by the learned counsel for the petitioner, namely, that a court has inherent powers in the matter of granting reliefs that appropriate relief can be granted even in the absence of a party and that where the claim for larger relief fails for some reason or the other a limited relief can be granted instead of dismissing the whole petition. Before further proceedings could be conceived on an election petition which suffers from such non-compliance with the provisions of S.82 it is first to be saved from the summary dismissal contemplated by Ss. 85 and 90(3) of the Act. The question of giving countenance to the limited relief arises only when the petition itself comprising that relief is first saved from the disastrous consequences of Ss.85 and 90(3) of the Act. In the face of such rigid and unyielding provisions of law contained in these new sections 82, 85 and 90(3) I think in a matter like this it is now no longer open to a Tribunal to look to common law or to the provisions of the Civil Procedure Code or other law or invoke its inherent jurisdiction and grant that relief to the petitioner to which he is otherwise entitled.

19. The word "election petition" cannot be interpreted on the analogy of the word "suit" mentioned in S.3 Limitation Act. A careful examination of Ss.84, 97, 98 and 101 of the Act will reveal that the relief of claiming a seat for a candidate other than the returned candidate is not a distinct or an independant relief. It is a further relief which is made available to a petitioner only in addition to the main relief of calling into question the election of the returned candidate and can be given by the Tribunal only after the election of the returned candidate is declared void. It cannot be divided or separated from the main relief for a declaration that the election of the returned candidate is void. It has no separate or independent existence of its own apart from the main relief. In such a situation it is inconceivable that this further relief can alone lay foundation for a separate and distinct election petition mentioned in S.80 of the Act. It is therefore, incorrect to say that the present petition consist of two separate and distinct reliefs which should be divided and the petition comprising the further relief of the seat should be dismissed under S.90(3) while the petition containing the limited relief for the declaration of the election of the returned candidate void be proceeded with on the analogy of S.3 Indian Limitation Act.

20. Then a careful examination of the various sections *viz* 80, 82, 84, 97, 98, 100, 101 and 117 of the Act reveals that in the context of the reliefs prescribed only two kinds of election petitions are contemplated by the Act, *viz*. (i) a petition in which only one declaration, that is, the main declaration of calling in question the election of the returned candidates is claimed and (ii) a petition in which two declarations, that is, the main declaration and a further declaration of the seat to a candidate other than the returned candidate is claimed. It will further be evident that though the petition containing the two declarations may appear to be a composite petition literally in the sense that it also includes the

relief for the main declaration but that is not so in law. Ss. 82, 84, 97, 98, 100 and 101 justify such a conclusion. Under Section 82 all the contesting candidates other than the petitioner are required to be impleaded to a petition which claims the two declarations while in the other petition in which a claim for the main declaration is only made all the returned candidates are required to be joined. The right of recrimination as provided in section 97 is available in respect of only that petition which contains the two declarations while it is not so in respect of the other petition. In the case of the petition containing the two declarations a Tribunal is required to make an order mentioned in Cl. (c) of S. 98 when it is found that the grounds mentioned in Ss. 100 and 101 exist while in the case of the other petition a Tribunal is required to make an order as provided by Cl. (b) of S 98 on proof of the grounds mentioned in S. 100 only. It will thus appear that both these petitions are distinct and separate in the sense that each has for its foundation separate and distinct reliefs and each has to observe certain procedural requirements. While S. 87 of the Act contemplates any number of such petitions in respect of the same election it is however clear that all such petitions must fall under either of the two categories mentioned above. The scheme of the Act nowhere contemplates a joinder of these two distinct and independent reliefs into one single election petition nor an election petition containing the two declarations is considered to comprise in it separate and divisible reliefs. When Ss. 85 and 90(3) lay down that a petition shall be dismissed in consequence of non-compliance with the provisions of S 81 or 82 or 117 they doubtless refer to both or either of these distinct kinds of petitions and none else. To say that the petition of the kind in hand which comprises two declarations be dismissed on account of the defect of non-compliance found therein but at the same time it should be treated valid *qua* the limited relief of calling into question the election of the returned candidate is to circumvent and replace the very provisions of the petition of the kind in hand which comprises two declarations be dismissed comprised therein is *de jure* a single petition containing one distinct and indivisible relief. It cannot be considered a composite petition and split upon the analogy of S. 3 Indian Limitation Act as canvassed by the learned counsel for the petitioner.

21. This result can be achieved in another way. Suppose a petition is brought calling into question the election of a returned candidate and a seat for a candidate other than the returned candidate is also claimed therein. This petition further contains certain allegations of any corrupt practice committed by any other candidate. The petitioner however joins as respondents to his petition all the contesting candidates but omits to implead that candidate against whom the allegations of corrupt practice are made in the petition This non-joinder of the other candidate is a clear non-compliance with the provisions of S. 82(b) and therefore the petition is to be dismissed summarily under Ss. 85 and 90(3). Can the petition be made innocuous and saved from the penal consequences of Ss. 85 and 90(3) on the analogy of S. 3 Indian Limitation Act? Can it be said that the word "petition occurring in these sections should be understood to mean the allegations of corrupt practices made against the other candidate? Can these allegations be allowed to be struck off or ignored by a Tribunal? I think not. For to do so will obviously weaken the very mandatory effects of these sections which indeed could not have been contemplated at the time of their enactment.

22. For the foregoing reasons I am definitely of the view that the term election petition occurring in these sections *viz.* Ss. 85 and 90(3) is to be given its plain and ordinary meaning. It cannot be strained in the manner submitted by the learned counsel for the petitioner. When Ss. 85 and 90(3) lay down that a petition shall be dismissed in consequence of non-compliance with the provision of Ss. 81, 82 or 117 they doubtless contemplate the dismissal of the whole petition and not that portion or prayer in the petition which renders it pernicious.

23. What are the facts here? In his petition Shri Binani has claimed a relief for both the declarations offered to him by S. 84. It is true under S 84 it is discretionary with him to claim the further declaration of the seat to himself but there can be no denying of the fact that once he exercised his discretion and claimed this further relief then it was incumbent on him to have complied with the penal requirements of section 82 by impleading all the contesting candidates as respondents to his petition Admittedly he has not impleaded Shri Hukam Singh who is a contesting candidate in terms of S 82 as respondent to his petition. The result of this non-compliance in view of what I have said above is that Ss. 85 and 90(3) cut the very foundation of the petition and render it invalid as a whole. It is inconceivable that even after flouting

the mandatory requirements of S. 82 the petitioner can in face of sections 85 and 90(3) save his petition from a summary dismissal. The Representation of Peoples Act is a special law. The election petition and the Tribunal appointed for its trial are the creation of this special statute. There are certain things required to be done by the special statute and they have to be strictly observed and enforced regardless of consequences. The petitioner should have taken care to comply with the essential requirements of S. 82 in the matter of impleading respondents when he was claiming a further declaration of the seat to himself. If he failed to do so he must suffer the consequences and face the summary dismissal of the entire petition. It may be that these provisions might work hard on a petitioner in a case like this but that should be no consideration for a Tribunal to weaken their mandatory effects or replace them by a procedure which is not warranted by the Act

24. The result is that I allow the respondent's preliminary objection and dismiss the petition under S. 90(3) because it fails to comply with the mandatory requirements of S. 82. There will be no order as to costs because the petition has been disposed of on a preliminary point.

(Sd.) SOHAN LAL AGARWAL,

Member,

(District Judge) Election Tribunal Balotra

August 30, 1957.

[No. 82/434/57/421.]

By Order,

A. KRISHNASWAMY AIYANGAR, Secy.

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